IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 6652 of 2004

Between:

Posani Radhakrishna Murthy, S/o.Late P.Sambasiva Rao,
R/o.4-4-104, 3rd Lane, Chandramouli Nagar, Guntur.

Proprietor, Pioneer Fertilizers Company, 23-6-3, Shivaji Building,
Patnam Bazar, Guntur.

..... PETITIONER

AND

1 Superintendent of Police, Guntur.
2 Station House officer, L&O, Lalapet Police Station, Guntur.
3 Vanama Sitarama Nageswara Rao, S/o.Venkataratnam,
R/o.23-7-8, R-Agraharam, Guntur.
4 Tadikonda Srinivasa Rao, S/o.T.Rajarao, M/s.Vanama Appanna
& Sons, Iron Merchants, Patnam Bazar, Guntur.
5 Tadikonda Subramanya Panakala Rao, S/o.Rajarao,
M/s.Vanama Appanna & sons, Iron Merchants, Patnam Bazar,
Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more in the nature of writ of Mandamus, declaring the actions of the Respondents in Dispossessing the petitioner from premises (Shop) No.23-6-3 Shivaji Buildings, Patnam Bazar, Guntur and locking the same in total disobedience of the orders of the Civil Court as arbitrary, illegal and without Jurisdiction.

Counsel for the Petitioner: MR.O.KAILASHNATH REDDY

Counsel for the Respondent Nos.1&2: GP FOR HOME

Counsel for the Respondent Nos.3 to 5: Mr. P.R. Prasad

The Court made the following ORDER:

Heard both sides and at their request the main writ petition itself is taken up for final disposal.

The petitioner herein, who claims to be a tenant in respect of the premises in question, filed this writ petition *inter alia* seeking a Writ of M*andamus* declaring the action of the respondents in dispossessing him from the premises (Shop) No.23-6-3, Shivaji Buildings, Patnam Bazar, Guntur District in total disobedience of the orders of Civil Court, as arbitrary, illegal and without jurisdiction.

The petitioner is a tenant of the premises in question and he has been in continuous possession since long time. It is his case that the land lord offered to sell the premises to him and received an amount of Rs.20,000/- as advance. As there were illegal pressures to force him out form the premises in question, the petitioner filed a suit in O.S.No.1756 of 2002 on the file of the Additional Junior Civil Judge, Guntur, wherein he has obtained ad-interim injunction till 18-12-2002. Thereafter, the same was modified to an order of status quo in I.A.No.1316 of 2002 in O.S.No.1756 of 2002 and the same is subsisting. The petitioner also stated that the Court also permitted him to deposit the rent into the Court vide I.A.No.186 of 2003, dated 18.03.2004. However, the contesting respondents in connivance with the landlord got the sale deeds executed in their favour. Thereafter the respondents filed a suit in O.S.No.395 of 2003 before the Principal Junior Civil Judge, Guntur for a decree to evict the petitioner from the premises in question and for recovery of arrears of rent. While the suit was pending, as per the directions of the second respondent, two Constables and respondent Nos.3 and 5 came to the petitioner's shop on 02.04.2004 at about 2.30 PM, trespassed into it, pushed out the clerk and locked the premises. Therefore, the grievance of the petitioner is that during the pendency of the civil proceedings, the interference of respondents 1 and 2 herein, is

wholly illegal.

In the counter-affidavit filed by respondents 3 to 5, it is stated that they have purchased the property in three portions as per the registered sale deeds dated 11.12.2002, and 21.12.2002 for valid consideration and thereafter, they have filed a civil suit for eviction of the petitioner in O.S.No.395 of 2003 on the file of the Principal Junior Civil Judge, Guntur, and the same is pending. However, the petitioner himself voluntarily gave possession of the shop on 22.03.2004. Thereafter respondents 3 to 5 filed a memo in the court prying the court to dismiss the suit as not pressed, since the petitioner himself vacated the premises. Thereafter, the petitioner again tried to occupy the shop making a false claim. Therefore, respondents 3 to 5 filed another suit in O.S.No.1069 of 2004.

It is to be noticed that against the interim orders granted in WPMP No.8628 of 2004 respondents 3 to 5 have carried the matter to the Division Bench in Writ Appeal No.743 of 2004 and the same was disposed of by order dated 12.04.2004 directing the Superintendent of Police, Guntur and Station House Officer L&O, Lalapet Police Station, Guntur to take possession of the said premises from respondent No.3 by locking the same forthwith and keep the same with the Station House Officer L&O, Lalapet Police Station, Guntur, who will abide by the directions to be issued in the main writ petition. Accordingly, the main writ petition is heard.

After considering the submissions made and also on perusal of the material available on record it is evident that the petitioner herein and as well as the respondents filed two different suits in O.S.No.1756 of 2002 and O.S.No.395 of 2003, which are pending in different Courts viz., Additional Junior Civil Judge and Principal Junior Civil Judge, Guntur. In the suit filed by the petitioner, there is already status quo order existing and also a direction for depositing the rents. Whereas the suits field by the contesting respondents are pending. The case of the respondents is that the petitioner himself had voluntarily offered the possession on 22.03.2004, which is sought to be denied by the petitioner herein on the ground that the said possession has been taken with the help of the local police. Having regard to the fact that substantive suits are already pending, it is not proper for this Court to make enquiry into any of the allegations from either side in respect of the possession. It is for the civil court to consider the aspect and decide upon the issue.

Under the above circumstances, this Court exercising the powers under

Section 24 of the C.P.C direct to withdraw the suit in O.S.No.1756 of 2002 on the file of the Additional Junior Civil Judge, Guntur to be clubbed and heard and disposed of along with O.S.No.395 of 2003, pending on the file of the Principal Junior Civil Judge, Guntur. The said Principal Junior Civil Judge, Guntur shall take up the issue as to whether the alleged delivery of the possession by the petitioner is valid and correct as a preliminary issue and decide the same after holding enquiry by providing opportunity for both sides. It shall be open for both sides to appear before the Principal Junior Civil Judge Guntur.

Having regard to the allegations made by the petitioner, it is desirable that the Superintendent of Police, Guntur and Station House Officer L&O, Lalapet Police Station, Guntur are hereby added as party defendants, who shall also be given notice and an opportunity to produce any evidence in support thereof.

The Writ Petition is accordingly disposed of with a direction that in the event it is found that the petitioner has been illegally dispossessed, it is needless to mention that the petitioner shall be entitled to restoration of possession. Till final orders are passed, possession of the premises shall continue to remain with the Police as per the orders of the Division Bench of this Court. No costs.

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B. Prakash Rao, J.

17th August, 2004

va/js.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 Superintendent of Police, Guntur.
2 Station House officer, L&O, Lalapet Police Station, Guntur.
3 Two CCs to G.P. for Home, High Court Buildings, Hyderabad(OUT).

4 2 CD copies.